Single Bench

(1) (3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

W.P . NO. 249 /2005

PETITIONER : Goutam Prasad, S/o. Hiraram Pradhan, aged about 47 years, R/o.Khairpur, Distt. Raigarh (C.G.).

VERSUS

RESPONDENTS

1) Prabhashankar S/o. Ganpati, Kolta, aged about 40 years Resident of Khairpur, Dist. Raigarh (C.G.)

2) Alok Kumar, S/o. Gautam Prasad, aged about 19 years, R/o. Khairpur, Distt. Raigarh (C.G.)

R.B. No. 338/05 Received by Mamta Upadhyay on 20-1-05

WRIT PETITION UNDER ARTICLE 226 /227 OF THE CONSTITUTION OF INDIA. FOR ISSUNCE OF APPROPRIATE WRITS / ORDERS AND DIRECTION

(39)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.249/ **सन्** 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

31.1.2005

Shri Ashish Gupta, counsel for the petitioner.

The petitioner has preferred this writ petition being aggrieved by the order dated 14.12.2004, whereby the petitioner's application under Section 151 of the C.P.C. was rejected by the learned Court below.

Brief facts leading to filing of this writ petition are that one Alok Kumar, respondent No.2 herein, filed a suit against 8 respondents, in all, through his mother for declaration of the will as null and void, and in that suit the petitioner herein, who is none else than the father of respondent No.2 herein and plaintiff in the suit, was defendant No.7. Perusal of the order sheet dated 14.10.2004 reveals that the plaintiff closed his evidence, thereafter, the matter was fixed for defendants' evidence, and on that day counsel for defendant No.2 and the present petitioner were present, and the suit was ex-parte against the remaining defendants. On that day, counsel for the defendants closed his evidence and the matter was fixed for final arguments on 16.10.2004. On 16.10.2004, an application was moved on behalf of the petitioner herein i.e. defendant No.7 in the original suit, who is father of the plaintiff, that defendant No.7, the petitioner herein, wants to adduce his own evidence for proving certain documents, and that was allowed ex-parte. But after some time on the same day, counsel for defendant No.2 appeared and raised objection that copy of the application has not been

Gt.PRJ—FS/350—12/2000—50,000.

(33)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.249/ **सन्** 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

served on him and he wants to file reply of the same. On the prayer of counsel for defendant No.2 copy was served and the matter was fixed for hearing on the application on 18.10.2004, and after hearing the parties, the application of defendant No.7 was rejected on the ground that he filed an application to adduce evidence in order to prove certain documents, but defendant No.7 in his written statement has already admitted the plaint and no document has been filed on his behalf, therefore his evidence is not necessary. Thereafter, defendant No.7 against this order moved an application under Section 151 of the C.P.C. stating that the trial Court was not entitled to review its order, therefore, he may be allowed to adduce his evidence, and the same was also rejected by the trial Court.

I have heard learned counsel for the petitioner herein on the question of admission.

Perusal of the order dated 16.10.2004 and the impugned order shows that no illegality or irregularity has been committed by the trial Court for the reason that in the first instance, counsel for the defendants No.2 & 7 on 14th October, 2004, themselves chose not to adduce any evidence, moreover, he admitted the plaint of respondent No.2 herein being father of respondent No.2. Thereafter, on 16.10.2004 defendant No.7 moved an application and that application was allowed in the absence of counsel for defendant No.2, and immediately on the same

Gt. PRJ—FS/350—12/2000—50,000.

(36)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.249/ सन् 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

day counsel for defendant No.2 appeared and raised objection that without hearing him the application has been allowed, therefore, a copy of the same was delivered to counsel for defendant No.2 and after hearing that application was rejected.

Therefore, in fact that was not any review, but on the same day the ex-parte order which was passed in the absence of defendant No.2 was recalled and after hearing both the parties, the application was rejected. As the earlier order was passed ex-parte, therefore, I do not find any substance in this writ petition and no illegality and infirmity has been committed by the Court below. Learned counsel for the petitioner has not been able to make out a case for interference by this Court in the writ jurisdiction.

In the circumstances, the writ petition is dismissed in limine.

Consequently, M.(W.)P.No.212/2005, I.A.Nos.537/2005 and 538/2005 stand disposed of.

Sd/-
L.C. Bhadoo
Judge

Soma